

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WASIM AZIZ,

Plaintiff,

v.

LARRY CRAWFORD, et al.,

Defendants.

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No. 4:09-CV-275 AGF

ORDER AND MEMORANDUM

This matter is before the Court on plaintiff's filing of an amended complaint [Doc. #9] and motion for reconsideration [Doc. #8] of this Court's March 5, 2009 Order of Dismissal pursuant to 28 U.S.C. § 1915(g) [Doc. #6].

The Court finds that plaintiff may proceed in forma pauperis solely with regard to his new claim that he is in imminent danger of serious physical injury in that he has "an infection in his mouth - in the pulp of the teeth" which defendant Unknown Bennett, a dentist at the Western Missouri Correctional Center, "refuse[s] to treat" and which will cause him to lose his teeth. Plaintiff's remaining claims relative to the other named defendants do not indicate that he is under imminent danger of serious physical injury, and therefore, the Court will dismiss them, without prejudice.

Under 28 U.S.C. § 1391(b), an action of this type may "be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in

which any defendant may be found, if there is no district in which the action may otherwise be brought.”

Because defendant Unknown Bennett is located in the Western District, and because the events that gave rise to plaintiff’s claim against defendant Bennett occurred in the Western District, venue is proper in the Western District of Missouri.

Under 28 U.S.C. § 1406(b), “The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” Because plaintiff is proceeding pro se, the Court finds that it is in the interest of justice to transfer this case to the United States District Court for the Western District of Missouri.

Accordingly,

IT IS HEREBY ORDERED that this Court’s Memorandum and Order dated March 4, 2009 [Doc. #5] and Order of Dismissal dated March 5, 2009 [Doc. #6] are **VACATED**.

IT IS FURTHER ORDERED that plaintiff’s "Motion to Reconsider" [Doc. #8] is **GRANTED IN PART AND DENIED IN PART**.

IT IS FURTHER ORDERED that, as to defendants Larry Crawford, Al Luebbers, Gil Since, David Johnson, Norman Steagall, Steve Larkins, Jonna Grubbs, Unknown Hamlin, Jerry Jackson, Noel Mason, Unknown Skaggs, Michael Rotter, Jean Ann Johnson, David Barnett, Juanita Barnett, Unknown Tyrell, Paul Drake, and Regina Braden, plaintiff’s action is **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that plaintiff’s motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's claim that he has a serious infection in his mouth that defendant Unknown Bennett refuses to treat does fall within the imminent danger exception under 28 U.S.C. § 1915(g).

IT IS FURTHER ORDERED that, because Bennett is the sole remaining defendant in this case, the Clerk shall transfer this case to the United States District Court for the Western District of Missouri. See 28 U.S.C. § 1406(b).

Dated this 8th day of April, 2009.

/s/ Jean C. Hamilton

UNITED STATES DISTRICT JUDGE